



Legal Protection Against Debtors in a Standard Agreement with the Existence of Freedom of Contract

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ABSTRACT

This study examines legal protection for debtors in standard agreements, which often disadvantage them due to creditor dominance, despite the principle of freedom of contract. Using a normative juridical method with a literature and conceptual approach, data were obtained from the Civil Code and Consumer Protection Law. The findings indicate that debtor protection can be preventive (transparency, prohibition of unilateral clauses, supervision by the Financial Services Authority) and repressive (cancellation of harmful clauses, compensation). However, imbalanced bargaining power and weak oversight remain significant challenges. It is concluded that ensuring justice in contractual freedom requires legal literacy, revision of unfair clauses, and strict enforcement of sanctions.

INTRODUCTION

In the civil law system, the principle of freedom of contract is a principle that gives parties the freedom to make agreements according to their wishes. Freedom of contract is a reflection of the development of free market understanding pioneered by Adam Smith whose implementation with classical economic theory based its thinking on the teachings of natural law. Freedom of contract provides flexibility for individuals or legal entities to determine the content, form, and terms of their agreements. While the principle of freedom of contract appears to provide flexibility for both parties, in reality, the party with the weaker bargaining position has no choice but to accept or reject the agreement in its entirety. This situation creates an imbalance that can lead to injustice, especially for the weaker debtor.

Article 1338 of the Civil Code states that "agreements made legally apply as law for those who make them." In today's increasingly complex modern era, standard agreements have become commonplace in various everyday transactions, from the use of digital services to agreements in the banking, insurance, and telecommunications sectors. Legally, agreements provide the broadest possible freedom for individuals to enter into agreements containing any content, provided they do not violate the law. This means that parties to an agreement are permitted to create their own provisions that deviate from the legal provisions of the agreement and are permitted to regulate their own interests within the agreements they enter into. A standard agreement is an agreement with standardized content and structure. Standard agreements are often used by companies to ensure quick and practical execution. This standard agreement is drafted unilaterally by the party in a stronger position, such as a company or service provider, who sets all the terms and conditions without giving the other party room to negotiate or change the terms. The other party (the counterparty) is generally in a weaker position, either due to their position or due to their ignorance, and simply accepts what is offered.

According to Mariam Darus Badruzaman, a one-sided standard agreement is one whose contents are determined by the party with the strongest position in the agreement. This powerful party is the creditor, who typically has a stronger economic position than the debtor. In the banking sector, for example, customers typically lack the ability to change the terms and conditions stipulated by the bank in a credit agreement. Similarly, in insurance, the insured must accept the policy terms set by the insurance company without further negotiation. This situation strongly demonstrates an imbalance of power and bargaining power, potentially leading to injustice for the weaker party.

Law Number 8 of 1999 concerning Consumer Protection is a legislative effort designed to protect the rights of consumers as the weaker party in transactions with business actors. Article 18 of Law No. 8 of 1999 states that business actors are prohibited from including clauses stating that consumers must comply with certain regulations determined unilaterally by the business actor, or clauses that limit consumers' rights to sue the business actor if they experience losses. This provision can provide assurance to consumers that they will not be bound by clauses that place them in an unfair position. In addition,

the article also states that if there is a clause that violates the provisions of this law, the clause is considered null and void, so it does not bind the weaker party.

LITERATURE REVIEW

The injustice that often occurs in standard agreements arises because of the lack of opportunity for the debtor to understand and evaluate all the clauses stated in the agreement. In many cases, the debtor does not even fully know the consequences of each agreed provision, especially if the terms are drawn up using complex legal language and are difficult to understand. This is where legal protection is very necessary in the context of a standard agreement in order to maintain a balance between the principles of freedom of contract and justice for the parties without the other party being harmed.

The effectiveness of implementing standard agreements within the context of the principle of freedom of contract often presents a dilemma. While this principle provides flexibility for the parties to enter into agreements, in practice, this freedom is not always effective, particularly in standard agreements. As agreements drafted unilaterally by the party with the stronger bargaining position, standard agreements tend to leave no room for the opposing party (*wederparti*) to negotiate the agreement's contents. This has the potential to create inequality and injustice, as the debtor only has the option to accept or reject the agreement in its entirety. Furthermore, the effectiveness of the freedom of contract principle in standard agreements is also influenced by the debtor's ability to understand complex clauses. Unilateral clauses, such as interest rate changes or late fees, often disadvantage debtors, who are not given the opportunity to negotiate or understand the implications of these provisions. Thus, although standard agreements provide efficiency in transactions, their effectiveness in maintaining a balance between the rights and obligations of the parties is still an issue that requires attention.

In the end, legal protection for debtors in standard agreements is very important to maintain balance in the practice of freedom of contract. This protection not only protects weak debtors but also ensures that the principles of justice and legal certainty are maintained in every agreement. The following are several examples of cases that illustrate how debtors can be disadvantaged in standard agreements amidst the principle of freedom of contract.

First case:

Sari, a small business owner, applied for a KUR loan to expand her business. The agreement stipulated a 10% penalty for any installment payment more than five days late. Due to financial difficulties, Sari was two months late in her payment, and the penalty amount became substantial, exceeding her loan installment amount. Despite attempts to negotiate, the creditor persisted with the penalty without offering any concessions. This case illustrates how the terms of a standard loan agreement can burden struggling debtors.

Second:

Andi applied for a home loan (KPR) at a major bank. The standard agreement provided lacked a detailed explanation of the bank's interest rate changes. A clause in the agreement stated that the mortgage interest rate could change according to the bank's internal policies and market conditions. Several years after obtaining the mortgage, the bank raised the interest rate significantly, causing Andi's monthly installments to skyrocket and exceed his ability to repay. Andi felt disadvantaged because this change was made without any communication or warning from the bank, and because he had no opportunity to negotiate the terms. His position as a debtor became increasingly weak, as the clause did not provide clear protection against unpredictable changes.

Third:

Budi, a customer who applied for a loan to purchase a vehicle, was bound by a standard agreement with the bank that included a clause stating that if he was more than two months late in paying his installments, the bank had the right to repossess the vehicle pledged as collateral. When Budi experienced financial difficulties and was two months late in paying his installments, the bank immediately repossessed the vehicle without giving Budi the opportunity to settle his obligations or negotiate for more affordable payments. In this case, the standard agreement, which burdened the debtor, was in a very weak position and was disadvantaged by the one-sided provisions.

The three cases above reflect how debtors are often trapped in standard agreements, with clauses that are one-sided and do not provide adequate protection. Better legal protection for debtors needs to be implemented so that injustice in contractual agreements does not continue to occur. Based on the matters referred to above, the researcher is interested in conducting thesis research entitled "Legal Protection of Debtors in Standard Agreements with Freedom of Contract".

METHODOLOGY

This research is a normative legal study, examining law as a system of norms, principles, and rules derived from statutory regulations, court decisions, agreements, and doctrine. The approaches used include a statutory approach to examine regulations related to debtor protection in standard agreements, as well as a conceptual approach to analyze legal principles and scholarly doctrines related to legal protection and the principle of freedom of contract.

The research data is sourced from secondary data consisting of primary legal materials (Civil Code, Law No. 8 of 1999 concerning Consumer Protection), secondary legal materials (expert opinions, scientific journals), and tertiary legal materials (dictionaries and encyclopedias). Data collection was conducted through library research, namely a review of relevant books, literature, and reports. Furthermore, the legal materials were analyzed in a normative juridical manner with an emphasis on applicable laws and regulations and related norms to answer the research problems.

RESEARCH RESULTS AND DISCUSSION

Forms of Legal Protection for Debtors in Standard Agreements with Freedom of Contract. In Indonesian civil law, the term debtor refers to a party obligated to fulfill a promise to a creditor. This promise can be in the form of money, goods, or the performance of a service. The debtor holds a crucial position in every agreement, as it is the party obligated to fulfill the terms of the agreement. Meanwhile, a standard contract is a unilateral agreement made by one party (usually the party with the stronger economic or legal position), and its contents are non-negotiable by the other party. In practice, standard contracts are widely used in the banking, insurance, and financing sectors, as well as in the sale and purchase of goods and services through digital platforms. A common example of a standard contract involves a customer (as the debtor) and a bank (as the creditor) in a loan or credit facility contract. In this case, the bank provides a pre-printed agreement format, and the debtor simply accepts or rejects it without any room for negotiation.

In a standard agreement, the debtor is in a weaker legal position compared to the creditor. This is because the debtor does not have the opportunity to negotiate the terms of the contract. He can only accept or reject the entire contents of the agreement. However, the law still provides protection to debtors from being harmed unilaterally. Based on Articles 1320 and 1338 of the Civil Code, every agreement must be made based on mutual agreement, entered into by legally competent parties, regarding a specific matter, and have a lawful cause. The agreement must also not conflict with the law, morality, or public order. However, in practice, debtors often do not fully understand the entire contents of the agreement because it uses complicated legal language or is printed in small print. Therefore, consumer protection laws (as regulated in Law No. 8 of 1999 concerning Consumer Protection) play a crucial role in maintaining a balance between the rights and obligations of the parties.

The principle of freedom of contract is one of the basic principles of civil law which gives the parties the freedom to determine the content, form and provisions of an agreement. This principle is explicitly regulated in Article 1338 paragraph (1) of the Civil Code, which states that "all agreements made legally apply as law for those who make them." This means that as long as the agreement meets the valid requirements of Article 1320 of the Civil Code, namely the existence of an agreement, capacity, a specific object and a lawful cause, then the agreement is valid and binding.

However, the implementation of the principle of freedom of contract often conflicts with the principle of justice, particularly in legal relationships involving parties with unequal bargaining positions. This is particularly evident in the use of standard agreements, where one party (usually the creditor) has full control over the drafting of the agreement, while the other party (the debtor) can only approve or reject the entire agreement without any room for negotiation. This situation gives rise to several problems, such as:

The inequality of position between creditors and debtors. Provisions that are detrimental to debtors, such as excessive fines, unilateral interest rate increases, or clauses regarding collateral withdrawal without due process. The

debtor's lack of understanding of the contents of the agreement, especially if the agreement is drafted using legal language that is difficult to understand.

These problems show that the principle of freedom of contract needs to be complemented by an effective legal protection mechanism to prevent injustice in standard agreements. Legal protection for debtors aims to create a balance between the principles of freedom of contract and justice. This protection can be divided into preventive legal protection and reactive legal protection, which are explained as follows:

Preventive Legal Protection

Preventive protection focuses on preventing losses from occurring before they result from standard contracts. Forms of preventive protection include: Prohibition of Unilateral Clauses that are Detrimental to Debtors. One of the most important forms of preventative protection is the regulation of standard clauses. Article 18 of Law Number 8 of 1999 concerning Consumer Protection (UUPK) states that business actors are prohibited from including clauses that: States that consumers are subject to the unilateral provisions of business actors. Eliminates the consumer's right to sue business actors if losses occur. Transfer the perpetrator's responsibility for the business to another party. Such clauses are considered invalid and null and void, and therefore not binding on the debtor. For example, if a credit agreement contains a clause stating that the debtor is responsible for the debt, that clause can be revoked through legal channels.

Transparency of Agreement Contents

Standard agreements must be drafted in clear, simple language that is easy for the debtor to understand. Ambiguity or the use of overly technical legal language can result in debtors not fully understanding their rights and obligations. In this case, the creditor has a responsibility to provide adequate explanation regarding the contents of the agreement before the debtor signs it.

Supervision by Regulatory Agencies

Institutions such as the Financial Services Authority (OJK) play a crucial role in overseeing standard agreements used by financial institutions. The OJK can establish guidelines regarding permissible clauses in credit or insurance agreements and impose sanctions on institutions that violate these provisions.

Education for Debtors

Educating the public about their rights as debtors is also a form of preventive protection. Debtors who understand their rights will be more careful in agreeing to standard agreements and better prepared to face creditors if a dispute arises.

Reactive Legal Protection

Reactive legal protection is provided after a loss occurs as a result of the implementation of a standard agreement. This protection includes:

Unfair Clause Cancellation

The debtor can file a lawsuit in court to cancel clauses in the standard agreement that are considered unfair or that were drawn up without the debtor's express consent.

Dispute Resolution through Alternative Dispute Resolution (ADR)

Debtors can resolve disputes through ADR mechanisms, such as mediation or arbitration, which are faster and less expensive than litigation. The Consumer Dispute Resolution Agency (BPSK) is one institution debtors can use to file complaints regarding standard agreements.

Claim for Compensation

If a debtor suffers a loss due to a creditor's breach of their obligations, they have the right to claim compensation. This compensation can take the form of a refund, a waiver of a fine, or other forms commensurate with the loss suffered.

External Oversight by the Courts

Courts have a role to review and, if necessary, annul standard contracts containing clauses that violate the principles of justice. Courts can issue decisions that provide greater legal protection to debtors.

The following is an example of a case that shows the importance of the law for debtors:

First case: Sari and the Late Fee for KUR Loans

In this case, Sari was charged a substantial late payment fine due to the provisions of the standard contract. Relevant legal protections include limiting the late payment fine to a proportionate amount and establishing a renegotiation mechanism for debtors experiencing financial difficulties.

Second: Andi and the Increase in Mortgage Interest Rates

The bank unilaterally raised interest rates without notifying Andi. The clause granting the creditor the unilateral right to change the interest rate can be voided for violating the principle of fairness.

Third: Budi and Vehicle Retrieval

Budi's vehicle was repossessed by the bank without prior notice. This action violated the principle of good faith and provided Budi with grounds for filing a lawsuit against the creditor. The principle of freedom of contract must always be balanced with the principle of justice. This balance can be achieved through:

Fair Standard Clause Setting

Standard agreements must be drafted taking into account the rights and interests of both parties. Oversight by regulatory agencies Institutions such as the OJK must continue to monitor the use of standard agreements to ensure that there are no clauses that are detrimental to debtors.

Improving Legal Education

Educating the public about the rights and obligations in standard agreements is very important to prevent abuse by creditors. Although various regulations have been implemented to protect debtors in standard agreements, there are several fundamental weaknesses that are still a problem in Indonesia, including:

Weak Supervision of Detrimental Standard Clauses

Many creditors and business owners continue to include unilateral clauses that disadvantage debtors, despite legal prohibitions. This is because oversight by institutions like the Financial Services Authority (OJK) and the Consumer Dispute Resolution Agency (BPSK) is still suboptimal. Every standard agreement created by a financial institution or large company should undergo a regulatory review process before it can be enforced.

Lack of Legal Awareness of Debtors

Many debtors sign standard agreements without thoroughly reading or understanding their terms. This is due to several factors, such as a lack of understanding of legal terminology, limited access to legal advice, and an inability to negotiate the terms of the agreement due to a weak bargaining position.

Suboptimal Complaint Mechanism

Debtors who feel disadvantaged by unfair standard clauses often experience difficulties in filing complaints. The court process for resolving disputes is expensive and time-consuming, while out-of-court dispute resolution mechanisms (such as through the BPSK or the Financial Services Authority) are still little known to the general public.

The following are several case studies that illustrate how legal protection for debtors in standard agreements still needs to be strengthened:

Case 1: Multipurpose Loan with Unreasonable Penalty Clause

A customer applied for a multi-purpose loan secured by a house certificate with a national private bank. The agreement included a clause stating that if the customer was late in paying installments for one month, a fine of 5% of the remaining debt would be imposed. This resulted in the customer's fine being extremely high, even exceeding the monthly installment amount. In this case, such a clause should be considered null and void under Article 18 of Law Number 8 of 1999 concerning Consumer Protection, which prohibits the inclusion of clauses that give businesses the unilateral authority to impose unfair sanctions.

Case 2: Vehicle Loan with Unilateral Withdrawal Rights

A consumer purchased a vehicle through a leasing system, which contained a clause stating that if payments were more than two months late, the

leasing company had the right to repossess the vehicle without prior warning. At one point, the debtor experienced a late payment due to delayed salary deductions. Without official notification, the debtor's vehicle was immediately repossessed by the leasing company at his home. This case reflects the misuse of a clause in a standard contract. Article 1320 of the Civil Code stipulates that a valid contract must be based on free agreement between the parties, but in this case, the debtor was not given the opportunity to negotiate or settle the arrears before the property was confiscated.

To improve legal protection for debtors, the following steps need to be implemented:

Mandating Standard Clause Examination by OJK and BPSK

Any financial institution that uses standard agreements must submit their clauses for review by the OJK before they can be used.

Increasing Public Legal Awareness

Educational programs on debtors' rights in standard agreements need to be increased through social media, seminars, and legal counseling in various regions.

Providing a More Accessible Complaint Mechanism

The government should provide more efficient complaint services for debtors, such as a free hotline or digital-based application to process complaints related to detrimental standard agreements. Furthermore, in practice, legal protection for debtors under standard agreements still faces challenges in terms of implementation and effectiveness of applicable law. Many debtors feel trapped in contracts that are detrimental to them, yet lack the capacity or legal knowledge to challenge clauses deemed unfair. One of the main causes of this problem is the lack of access to adequate legal information for the general public. Many debtors sign standard agreements without a detailed understanding of their rights, leaving them vulnerable to abuse by creditors. Therefore, broader legal education efforts are needed to enable the public to be more critical in understanding the contents of contracts before signing them.

In addition to legal education, the role of advocates and legal aid institutions is also very important in providing protection to debtors who feel disadvantaged by unfair standard agreement clauses. Unfortunately, many lower-middle-class debtors lack access to professional legal services due to high costs. To address this issue, the government can encourage the strengthening of free or pro bono legal aid services for those in need. With more accessible legal aid, debtors experiencing problems with standard agreements can receive assistance in resolving their disputes, either through formal legal channels or alternatives such as mediation and arbitration.

On the other hand, legal protection for debtors can also be strengthened through the development of a more sophisticated, technology-based supervisory system. Currently, supervision of financial institutions using standard agreements relies on a manual system that tends to be slow and ineffective. As a solution, the Financial Services Authority (OJK) and the Consumer Dispute

Resolution Agency (BPSK) can develop a digital platform that allows the public to report standard agreements deemed unfair. This system will allow public reports to be processed more quickly, and regulators can promptly follow up on these reports by evaluating the content of the agreements used by the companies involved.

Furthermore, the government can also encourage stricter regulatory reforms governing standard agreements, particularly in the financial and business sectors. One step that can be taken is to establish a list of prohibited clauses that may not be used in standard agreements. With more detailed regulations regarding permitted and prohibited clauses, the misuse of standard agreements by creditors can be minimized. These regulations can also be strengthened with stricter sanctions for companies or financial institutions that continue to include unlawful clauses.

In addition to regulatory reform, the implementation of more flexible standard contracts could also be a solution to address the imbalanced bargaining power between creditors and debtors. Currently, most standard contracts are drafted unilaterally by creditors, leaving no room for negotiation for debtors. Alternatively, financial institutions could be required to provide several contractual options tailored to the financial circumstances and needs of debtors. For example, in credit agreements, debtors could be given the option to choose between fixed and floating interest rates, giving them greater control over their financial decisions. In the long term, the effectiveness of legal protection for debtors under standard contracts will also depend heavily on the synergy between the government, regulators, academics, and civil society. The government must take an active role in formulating policies that protect debtors, while regulators such as the Financial Services Authority (OJK) must be more proactive in overseeing the implementation of standard contracts across various sectors. Academics and legal researchers can also contribute by conducting further studies on the impact of standard contracts on consumer protection and developing more comprehensive policy recommendations.

In addition to regulatory reform, the implementation of more flexible standard contracts could also be a solution to address the imbalanced bargaining power between creditors and debtors. Currently, most standard contracts are drafted unilaterally by creditors, leaving no room for negotiation for debtors. Alternatively, financial institutions could be required to provide several contractual options tailored to the financial circumstances and needs of debtors. For example, in credit agreements, debtors could be given the option to choose between fixed and floating interest rates, giving them greater control over their financial decisions. In the long term, the effectiveness of legal protection for debtors under standard contracts will also depend heavily on the synergy between the government, regulators, academics, and civil society. The government must take an active role in formulating policies that protect debtors, while regulators such as the Financial Services Authority (OJK) must be more proactive in overseeing the implementation of standard contracts across various sectors. Academics and legal researchers can also contribute by conducting

further studies on the impact of standard contracts on consumer protection and developing more comprehensive policy recommendations.

With policy reforms, increased legal literacy, and strengthened oversight of standard contract practices, legal protection for debtors in Indonesia can be more effective and ensure a balance between rights and obligations in standard contracts. This will create a fairer and more transparent legal system, where freedom of contract is respected without sacrificing the principle of justice for the weaker party in legal transactions. Legal protection for debtors must be strengthened to ensure that freedom of contract is not used to exploit a stronger bargaining position, but rather prioritizes balance and fairness for both parties.

The Influence of Freedom of Contract on the Validity of Standard Agreements

A standard agreement can still be considered legally valid as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. These four requirements are: (1) agreement between the parties, (2) legal capacity, (3) a specific matter, and (4) a lawful cause. This means that as long as these requirements are met, a standard agreement remains binding and valid as law for the parties who sign it. However, in practice, the validity of standard agreements is often questioned due to limitations in the principle of freedom of contract. Ideally, freedom of contract provides space for both parties to negotiate the contents of the agreement equally. However, in a standard agreement, one party, usually the business actor or creditor, determines the contents of the contract unilaterally. The other party (for example, the consumer or debtor) is only given the option to accept the entire contents of the agreement or not at all, without the opportunity to negotiate.

This situation creates a power gap between the parties, potentially violating the principles of justice and good faith. Therefore, even if a standard agreement is formally valid, its content can still be tested for its fairness, materially or substantively. In this regard, Law No. 8 of 1999 concerning Consumer Protection plays a crucial role. Article 18 of this law states that standard clauses that grant unilateral authority to a business actor or that unilaterally relieve a business actor of their responsibilities can be declared null and void.

The enforcement of standard agreements is a complex issue in modern contract law. This becomes increasingly relevant in the era of globalization and digitalization, where economic transactions involving standard agreements occur daily in various sectors, from financial services and trade to digital services. Standard agreements, which are essentially agreements whose clauses have been unilaterally determined by one party (usually a business entity), have great potential to become an efficient instrument for regulating legal relationships. However, the effectiveness of its implementation is often questioned, especially when faced with the principle of freedom of contract.

The principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as law for the parties who make them. In this principle, the parties are given the freedom to make, compile, and determine the contents of the agreement according to their

wishes, as long as it does not conflict with the law, morality, and public order. However, in the context of standard agreements, freedom of contract often becomes illusory because one of the parties (usually the debtor or consumer) does not have the freedom to negotiate the contents of the agreement.

The impact of a standard agreement is thus not only determined by whether it can be enforced in accordance with applicable law, but also by whether its implementation reflects fairness for both parties. The imbalance in bargaining power between creditors and debtors often renders the implementation of standard agreements ineffective, particularly from the debtor's perspective. Debtors and consumers typically can only accept or reject agreements drafted by creditors, leaving no room to adapt the agreement's contents to their own needs or interests. This phenomenon is known as the "take it or leave it" principle in standard agreements.

In practice, the impact of standard agreements can be examined from various perspectives. Standard agreements are essentially intended to create efficiency, reduce transaction costs, and expedite the negotiation process. For example, in credit agreements between banks and customers, the preparation of standard agreements allows banks to efficiently manage thousands or even millions of credit agreements without having to draft separate agreements for each customer. However, this practicality often comes at the expense of fairness for the party with the weaker bargaining position. This imbalance is often evident in clauses that are disadvantageous to the debtor, such as clauses limiting the creditor's liability, imposing excessive fines, or granting the creditor unilateral authority to change the terms of the agreement. Such clauses can render the implementation of standard agreements ineffective in protecting the interests of both parties equally. Therefore, although standard agreements are considered effective in terms of efficiency, their effectiveness in reflecting fairness for the debtor remains questionable.

The influence of standard agreements in the legal system also depends on the extent to which the law can protect the weaker party in the agreement. Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) provides an important legal basis for protecting consumers from injustice in standard agreements. Article 18 paragraph (1) of the Consumer Protection Law, for example, explicitly prohibits the inclusion of clauses that are one-sided and burdensome to consumers. Clauses that violate this provision are declared null and void by law. However, even though this regulation exists, its implementation still faces various challenges. One of these is the public's lack of understanding of their rights as consumers or debtors. Many consumers are unaware that they have the right to reject detrimental clauses or report violations to the appropriate authorities. Furthermore, regulators often force businesses to continue including clauses that violate the law.

From a social perspective, the influence of standard agreements is also influenced by the level of public legal awareness. In many cases, debtors or consumers tend to feel powerless when faced with standard agreements that are perceived as detrimental. This is exacerbated by the assumption that signed agreements cannot be challenged or amended. As a result, many consumers

choose to accept burdensome terms rather than take legal action to protect their rights. Furthermore, the effectiveness of standard agreements is also influenced by the prevailing legal culture in society. In Indonesia, a legal culture that tends to be formalistic often leads society to focus more on implementing formal rules than on substantive justice. In the context of standard agreements, this means that society tends to accept such agreements as binding "laws," even if their content is unfair or unlawful.

The impact of the implementation of standard contract agreements depends largely on how the principle of freedom of contract is interpreted and applied in practice. Freedom of contract, which is the foundation of contract law, must be balanced with the principles of justice and legal protection for the weaker party. In this regard, a more inclusive and progressive approach is needed to ensure that freedom of contract is not abused to create injustice. One way to achieve this balance is by increasing transparency in the process of drafting standard contract agreements. Creditors or business actors must ensure that the contents of standard contract agreements are clearly drafted, easy to understand, and do not contain clauses that burden either party. Furthermore, strengthened regulations and oversight are needed to ensure that the implementation of standard contract agreements aligns with the principle of justice. To understand the effect of implementing standard agreements with freedom of contract, it is necessary to examine several aspects that significantly influence their implementation, namely:

Bargaining Position between Creditors and Debtors

The bargaining power between creditors and debtors significantly influences the effectiveness of standard agreements. In many cases, debtors or consumers are in a weaker position than the creditors or business actors who draft standard agreements. This often leads to an imbalance in the agreement, where debtors lack the freedom to negotiate or adjust the terms of the agreement to suit their own interests. This weak bargaining position can cause the debtor to be forced to accept detrimental provisions, which ultimately affects the balance and fairness in the implementation of the standard agreement.

Compliance with the Principle of Transparency

Compliance with the principle of transparency is a crucial aspect of the implementation of standard agreements. Creditors or business actors drafting standard agreements must ensure that all clauses contained within the agreement are clear and easily understood by debtors or consumers. Ambiguity or concealment of important information within an agreement can be detrimental to the weaker party. Furthermore, transparency also relates to the obligation to provide adequate information regarding the legal consequences of certain clauses, so that the parties can make informed decisions and based on sufficient knowledge.

Legal Certainty

Legal certainty in standard agreements is crucial to ensure that they can be enforced in accordance with applicable law. Legal certainty also includes protecting the rights of debtors and consumers in the face of unfair provisions. This involves applying the principle of fairness in drafting agreement clauses and consistent legal enforcement to protect the weaker party. Without legal certainty, the implementation of standard agreements can be hampered and the risk of injustice increases.

Dispute Resolution Mechanism

A clear and effective dispute resolution mechanism is a crucial aspect of any standard agreement. In the event of a dispute between a creditor and a debtor, a fair and efficient procedure for resolving the dispute is vital. These mechanisms typically take the form of mediation, arbitration, or litigation, allowing aggrieved parties to seek justice without the constraints of lengthy and expensive legal proceedings. Providing a clear dispute resolution pathway will increase the effectiveness of standard agreements, as debtors or consumers feel better protected in facing potential legal issues.

Public Legal Awareness

Public legal awareness, particularly among debtors and consumers, plays a significant role in the effectiveness of standard agreements. Without a sufficient understanding of their rights under the agreement, consumers and debtors often find themselves trapped in detrimental agreements. Therefore, education and outreach regarding contract law, consumer rights, and business obligations are crucial. With increased legal awareness, the public will be better able to assess the content of agreements and seek justice if their rights are violated. High legal awareness can also reduce reliance on the courts, as the public will be more inclined to resolve disputes legally and fairly. To increase the effectiveness of implementing standard agreements, several steps can be taken, namely:

Improving Legal Literacy

Debtors need to be given a better understanding of the content and consequences of standard agreements. This can be achieved through broader legal outreach or education.

Tighter Supervision

The government needs to increase oversight of standard agreements, especially in sectors that involve the wider community, such as banking and insurance.

Revision of Detrimental Clauses

Business actors need to ensure that the clauses in standard agreements do not conflict with the principles of justice and consumer protection.

Implementation of Strict Sanctions

Strict sanctions need to be applied to business actors who include clauses that violate the law, so that they can have a deterrent effect. The impact of implementing standard agreements in Indonesia depends on various factors that influence the balance between debtor and creditor interests. These factors include:

Unequal Bargaining Position

One of the main factors hindering the effectiveness of standard agreements is the unequal bargaining power between debtors and creditors. In many cases, debtors have no choice but to agree to agreements drafted by creditors without any opportunity to negotiate. This contradicts the principle of fairness in contracts, which should provide both parties with the opportunity to reach an equal agreement. For example, in vehicle or housing loan agreements, borrowers can only accept or reject the agreement prepared by the bank or financing institution. They have no opportunity to request revisions to clauses they deem detrimental. As a result, many borrowers feel trapped in unfair contracts.

Lack of Transparency in the Contents of the Agreement

Another frequently encountered problem is the lack of transparency in the content of standard agreements. Many agreements are written in complex legal language, making them difficult to understand for borrowers without legal training. Some banks and financing institutions even include clauses that are difficult to find in contract documents, or write them in small print to prevent them from being easily seen. As a result, borrowers are often unaware of the existence of certain clauses that could be detrimental to them until problems arise. As a solution, financial institutions should be required to provide contract summaries in simple and clear language, so that debtors can understand their rights and obligations before signing the agreement.

Weak Supervision of Financial Institutions

The impact of standard agreements also depends heavily on the strict oversight of regulators, such as the Financial Services Authority (OJK) and the Consumer Dispute Resolution Agency (BPSK). Currently, oversight of the content of standard agreements remains relatively weak. Many leasing companies, banks, and other financial service providers continue to use clauses that disadvantage debtors without facing sanctions. Regulators should have a more stringent audit system to ensure that every agreement used by financial institutions complies with the principles of fairness and consumer protection.

Lack of Effective Dispute Resolution Mechanisms

Although debtors have the right to object to detrimental clauses, the dispute resolution process is often difficult and time-consuming. If debtors want to file a lawsuit in court, they must prepare a significant amount of money and

face a protracted legal process. Meanwhile, alternative routes such as mediation and arbitration are still less popular and rarely used by the public.

As a solution, it is necessary to develop faster and cheaper dispute resolution mechanisms, such as digital-based complaint services that allow debtors to submit complaints online and receive decisions in a shorter time. In order for standard agreements to run more effectively and not be detrimental to debtors, various improvement steps are required, including:

Requiring the Creation of Standardized Standard Agreements

The government, through the Financial Services Authority (OJK) and the Ministry of Law and Human Rights, must standardize standard agreements that can be used by all financial institutions and leasing companies. This standardization should include: Fair provisions regarding the rights and obligations of both parties. Prohibition on the use of unilateral clauses that are detrimental to debtors. Establishment of more effective dispute resolution mechanisms.

Improving Legal Education for the Community

Many debtors sign agreements without understanding their contents. Therefore, the government and community organizations must be more active in providing education regarding debtors' rights under standard agreements. One way to do this is by conducting financial literacy campaigns that are widely accessible to the public through social media, seminars, and online legal education apps.

Strengthening Supervision by OJK and BPSK

Supervision of the contents of standard agreements needs to be increased by: Conduct periodic audits of contracts used by financial institutions. Imposing sanctions on companies that still include clauses that are detrimental to debtors. Form a special team that can handle complaints related to standard agreements more quickly and efficiently. Although various regulations have been implemented to ensure the effectiveness of standard agreements in the Indonesian legal system, challenges remain to ensure their effective implementation. One major challenge is low public awareness of their rights under standard agreements. Many debtors sign agreements without understanding the legal consequences inherent in each clause they agree to. This is exacerbated by the public's reluctance to question the contents of contracts, believing that the terms set by financial institutions or companies are absolute. Therefore, a broader and more widespread mechanism is needed to disseminate information about debtors' rights and obligations, including through public education campaigns, the integration of legal literacy into the education system, and the provision of free legal consultation services to the public.

Besides low public legal awareness, another challenge to the effective implementation of standard contract agreements is the suboptimal role of supervisory institutions in ensuring financial institutions' compliance with applicable regulations. In some cases, despite regulations prohibiting the

inclusion of standard contract clauses that are detrimental to debtors, many financial institutions still ignore these rules without facing strict consequences. This indicates that the sanctions imposed for violations of standard contract agreements are still not strong enough to provide a deterrent effect. Therefore, stricter oversight mechanisms are needed, such as regular inspections of contracts used by financial institutions and digital monitoring systems that allow debtors to report agreements that do not comply with legal provisions.

In addition to stricter oversight, the effectiveness of standard agreements can also be enhanced through improvements in dispute resolution mechanisms that are more responsive and accessible to debtors. Currently, many debtors experience difficulties in resolving disputes under standard agreements due to limited access to fast and efficient legal mechanisms. Litigation in court is often time-consuming and expensive, making it an unrealistic option for debtors experiencing issues with agreement clauses. As an alternative, out-of-court dispute resolution mechanisms such as mediation, arbitration, or settlement through the Consumer Dispute Resolution Agency (BPSK) must be strengthened to provide faster and more affordable solutions for debtors.

Furthermore, the effectiveness of standard agreements in maintaining a balance between the rights and obligations of the parties also depends on the willingness of business actors and financial institutions to implement principles of transparency and fairness in business. Responsible creditors should not only comply with applicable legal provisions but also adopt more ethical business practices in drafting agreements with debtors. For example, financial institutions can provide debtors with greater flexibility in choosing payment schemes that suit their financial circumstances and provide support services to help debtors understand the terms of the contract before signing. If these principles are widely implemented, the effectiveness of standard agreements in creating fair and mutually beneficial legal relationships will be more easily realized.

CONCLUSION

Based on the discussion, two main points can be concluded. First, legal protection for debtors in standard agreements requires comprehensive preventive and reactive mechanisms. Clear regulations, strict supervision and increased legal awareness are essential to balance the position of debtors and creditors. This aims to ensure that the principles of justice and protection of weaker parties can run in harmony with the principle of freedom of contract. Second, the implementation of the principle of freedom of contract in standard agreements still faces significant challenges in legal practice in Indonesia. The main obstacles include unequal bargaining positions, the complexity of legal language, the existence of unilateral clauses, and weak supervision, which collectively hinder the realization of justice in standard agreements.

RECOMMENDATION

This research suggests two important points. First, every standard agreement must always be drawn up and implemented fairly, in good faith, and maintaining a balanced position between all parties. Freedom of contract is not

an excuse to create agreements that are detrimental or oppressive to other parties, especially consumers or debtors who are in a weaker position. Second, the validity of a standard agreement is not solely determined by its formal approval, but also by its content and the manner in which it is drafted. Freedom of contract does not mean absolute freedom to dominate. Therefore, even if a standard agreement is considered legally valid, the court still has the right to annul parts of it if it is proven to be unfair, lacking in good faith, or in violation of consumer protection regulations.

ADVANCED RESEARCH

1. The scope of the research is limited to the challenges of using the noken system in regional head elections in Papua.
2. The data used in this study is limited to secondary sources in the form of related literature and does not include primary data from the direct experiences of communities in areas that use the Noken system.

REFERENCES

- A, Rahman. *Transparansi Dan Keadilan Dalam Perjanjian Bisnis*. Bandung: Citra Aditya Bakti, 2018.
- B, Arianto. *Prinsip-Prinsip Hukum Dalam Perjanjian Baku Di Era Digital*. Yogyakarta: Universitas Gajah Mada Press, 2017.
- Darus Badruzaman, Mariam. *KUHPerdata Buku III: Hukum Perikatan Dengan Penjelasan*. Bandung: Citra Aditya Bakti, 2000.
- — —. *Perjanjian Baku : Perkembangannya Di Indonesia*. Bandung: Alumni, 1980.
- E, Santoso. *Perlindungan Hukum Konsumen Dalam Perjanjian Baku*. Jakarta: Sinar Grafika, 2019.
- Harahap, Muhammad Yahya. *Segi-Segi Hukum Perjanjian*. Bandung: Alumni, 1986.
- R. Subekti dan R. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: Balai
- R.Subekti. *Hukum Perjanjian*. Jakarta: Internassa, 1987.
- R. Subekti dan R. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: Balai Pustaka, 2014.
- R, Budiarto. *Sengketa Dan Penyelesaiannya Dalam Hukum Perdata*. Semarang: Universitas Diponegoro Press, 2020.
- Soerjono, Widodo. *Hukum Kontrak Di Indonesia: Perspektif Kebebasan Berkontrak Dan Keadilan*. Jakarta: Penerbit Universitas Indonesia, 2015.
- Subekti. *Hukum Perjanjian*. Jakarta: Internassa, 2005.

— — —. Hukum Perjanjian Dan Ganti Rugi. Bandung: Alumni, 2009.

— — —. Hukum Perjanjian Di Indonesia. Bandung: Alumni, 2004.

Subekti, Mertokusumo. Hukum Perjanjian. Jakarta: Penerbit Ghalia Indonesia, 2009.

Usman, Rachmadi. Hukum Perikatan. Jakarta: Sinar Grafika, 2005.

— — —. Perlindungan Hukum Konsumen. Jakarta: Sinar Grafika, 2005.

Peraturan Perundang-Undangan

Undang-Undang No.8 Tahun 1999 Tentang Perlindungan Konsumen

Undang-Undang No.37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang

Kitab Undang-Undang Hukum Perdata

Jurnal/Skripsi/Makalah/ Artikel

Agus, Hendrawan. "Perlindungan Konsumen Dalam Perjanjian Baku Di Indonesia." Jurnal Hukum Dan Pembangunan 28, no. 1 (2018): 90-102.

Heru, Hartono. "Efektivitas Perjanjian Baku Dalam Hukum Kontrak Indonesia." Jurnal Hukum Bisnis 15, no. 2 (2020): 201-15.

Murni Indah. "Pentingnya Literasi Keuangan Dan Hukum Bagi Konsumen Dalam Menghadapi Perjanjian Baku." Jurnal Litigasi 18 (2017).

Murni, Retno. "Penguatan Bantuan Hukum Pro Bono Untuk Mewujudkan Keadilan Sosial." Jurnal Konstitusi 3 (2017).

Palar F. R., Deny. "Peran Lembaga Bantuan Hukum Dalam Penyelesaian Sengketa Konsumen." Jurnal Hukum Dan Pembangunan 1, no. 47 (2017).

Redjeki Purwaningsih, Sri. "Perlindungan Hukum Konsumen Dalam Perjanjian Baku: Suatu Tinjauan Terhadap Klausul Eksonerasi." Jurnal Hukum Bisnis 1, no. 23 (2014).

Sunarmi. "Pengawasan OJK Terhadap Perjanjian Baku Lembaga Keuangan." Jurnal Hukum Bisnis 25, no. 3 (2016).

Supramono Gatot. Perjanjian Utang Piutang. Jakarta: Kencana Prenada Media Group, 2013.

Syaifuddin, Muhammad. "Efektivitas Sanksi Hukum Dalam Perlindungan Konsumen." Jurnal Kebijakan Hukum 13 1 (2019).

Yudha Hernoko, Agus. "Alternatif Penyelesaian Sengketa Sebagai Mekanisme Perlindungan Konsumen." Jurnal Hukum Ius Quia Iustum 4 (2011).

— — —. “Asas Kebebasan Berkontrak Dan Perlindungan Hukum Bagi Pihak Yang Lemah Dan Perjanjian Standar.” *Jurnal Hukum Ius Quia Iustum* 16 3 (2009).

Zamroni, Mohammad. “Urgensi Pembatasan Prinsip Kebebasan Berkontrak Dalam Perspektif Historis.” *Perspektif Hukum* 19, no. 2 (2019). <https://doi.org/https://doi.org/10.30649/ph.v19i2.113>